PART 6 ALLEGATIONS OF QUID PRO QUOS

Chapter 34: Overview and Legal Analysis

Allegations concerning "quid pro quos," or favors received from government officials in return for financial contributions, go to the heart of public concern over campaign finance. One of the most discouraging aspects of the present campaign finance system is that even public policy decisions undertaken in the utmost good-faith can take on an appearance of impropriety in the context of a system where so many of the individuals or entities likely to be affected by government actions are able to make the kind of large campaign contributions presently permitted by our system.

It is instructive to note at the outset what some federal courts have stated as the underlying purpose of the bribery and illegal gratuities law, that is, to prevent the sale of better government services to those who can afford to pay for it:

> All sections of the bribery statute are aimed at preventing the evil of allowing citizens with money to buy better public service than those without money . . . '[e]ven if corruption is not intended by either the donor or the donee, there is still a tendency in such a situation to provide conscious or unconscious preferential treatment of the donor by the donee, or the inefficient management of public affairs." United States v. Biaggi, 853 F.2d 89, 101 (2d Cir. 1988), cert. denied, 109 S.Ct. 1312 (1989).

LEGAL ANALYSIS

The primary consideration under federal criminal law would be the federal bribery statute. That statute provides criminal penalties for anyone who, directly or indirectly, corruptly offers to a public official something of value, or promises to give something of value to "any other person or entity," with the intent to "influence any official act." 18 U.S.C. § 201(b)(1)(A). The statute also reaches the public official who corruptly seeks or agrees to receive something of value for himself or "for any other person or entity" in return for being influenced in any official act. 18 U.S.C. § 201(b)(2)(A).

The bribery statute requires that the thing of value being sought by the public official be "in return for being influenced" in the performance of any official act. This is part of the corrupt intent which is characteristic of a bribe. This element of the offense, that the thing of value sought or received is "in return for being influenced" in an official act, requires that there be some express or implied quid pro quo involved in the transaction. United States v. Arthur, 544 F.2d 730, 734-735 (4th Cir. 1976); United States v. Brewster, 506 F.2d 62, 72 (D.C. Cir. 1974). That is, the bribe must be shown to be the "prime mover or producer of the official act" performed or promised to be performed. Brewster, 506 F.2d at 72, 82. So-called "goodwill" payments or general contributions, which are given to create a favorable atmosphere or feeling of gratitude in the recipient, or with the hope or expectation of some possible future, undefined benefit, but which are neither given nor received in the context of any express or implied agreement to

perform some identified official act, that is, without a specific quid pro quo, are not considered "bribes" under the statute. Arthur, 544 F.2d at 734, 735.

OVERVIEW OF FOLLOWING CHAPTERS

As the preceding legal discussion demonstrates, a finding of an illegal quid pro quo requires much more than simply pointing out that an individual or entity made a campaign contribution some time before or after a government action was taken which benefitted that individual or entity. Instead, the Committee looked to the nature of the contacts between the contributors and the decision makers, whether the contributions were unique or singular in the history of the contributor at issue, and whether the decision or action at issue seemed unsupported by the facts. Unfortunately, many of the allegations of illegal quid pro quos leveled against Democratic contributors and fundraisers ignored these evidentiary issues in favor of simplistic and cynical interpretations of government decision making.

On the final day of the Committee's hearings, Interior Secretary Babbitt, along with a former colleague who had unsuccessfully lobbied Secretary Babbitt to approve an Indian trust application for the purpose of building a casino near Hudson, Wisconsin, were called to testify about allegations that Interior's denial of the Hudson casino proposal was undertaken in response to political pressure brought to bear by opposing tribes who were also Democratic Party supporters. Significantly, the original allegations of improper political influence in this case were generated in the context of a still-unresolved lawsuit brought by the gaming interests who seek to run the casino in partnership with the Indians. Although much of the hearing was devoted to the particulars of a comment made to Eckstein at one point by Secretary Babbitt which referenced Harold Ickes, the Committee largely ignored the extensive evidentiary record it had created which found no evidence that Babbitt had played any role in the decision or that the Interior officials who did make the decision had any knowledge of either campaign contributions by the opposing tribes or alleged "pressure" from the White House or the DNC to deny the casino proposal. These simple points, along with the ample factual record that supported the merits of Interior's decision, did not receive sufficient attention.

These same defenses were not available to Haley Barbour with respect to his vigorous advocacy of tobacco interests which donated millions of dollars to the Republicans during the 1996 election cycle. The Committee's investigation uncovered detailed evidence of overtures Barbour made personally to Republican elected officials on behalf of tobacco interests. It is difficult to argue the merits of some of the pro-tobacco positions urged by Barbour and apparently impossible to do so with respect to the $50 billion tax credit granted to the tobacco interests as part of the 1997 budget bill due, in part, to Barbour's efforts. Barbour declined the Committee's invitation to explain these actions and, perhaps as a result, the Committee never found evidence that the contributions were made with the intent of effecting such a huge giveaway. Although the Committee's investigation did not uncover illegality on Barbour's part, the relationship between the Republican Party and monied tobacco interests is a prime example of the kind of story that feeds public disillusionment about our political system.

Allegations of a quid pro quo arrangement were also levelled with respect to a $100,000 contribution made by the Cheyenne-Arapaho Tribes (the "Tribes") to the DNC in 1996. At the time the Tribes made their donation they were involved in a lobbying campaign to reacquire certain tribal lands in Oklahoma that had been taken by the Federal government. There was no evidence presented to the Committee, however, that anyone within the DNC or the Administration made any promises to the Tribes concerning the return of their lands in exchange for their contribution. Indeed, the President had supported legislation which would have assisted the Tribes in asserting their claim to the lands almost two years prior to the Tribes' contribution. The Tribes had also succeeded in obtaining access to officials in the appropriate federal agencies well before their contribution. There has been no evidence presented to the Committee that any official in a decision-making capacity with respect to these lands was even aware of the Tribes' contribution.